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FILINGS WITH THE LEGISLATIVE RESEARCH COUNCIL

Notice of Proposed Rules

Date in parentheses indicates when rules were filed with the Legislative Research Council.
Copies of proposed rules may be obtained for no charge at <https://rules.sd.gov> or from the agency directly.

Department of Social Services: (September 13, 2023) intends to amend and adopt rules to update citations; update procedure codes that are reimbursed at a percent of the provider's usual and customary charge and included on the applicable fee schedule; clarify coverage for the removal of implanted contraceptives; clarify coverage for routine foot care services for those diagnosed with metabolic, neurologic, or peripheral vascular diseases; update personal care assessment frequency and the information reviewed; clarify reasons for discontinuation of personal care services; remove the certificate of medical necessity requirement to align with Medicare; increase the timeliness of access to breast pumps by updating billing provisions; update treatment plan timing to coordinate with the mental health chapter and current practice; update and clarify nursing facility level of care definitions, categories, and various coverage for services; clarify what settings and services apply to each level of care classification; clarify and detail the specialized therapy services that are covered under the Family Support 360 waiver program and update the applicable procedure codes for billing those services; and remove repealed rule references. The general authority for these rules, as cited by the department, is SDCL [28-6-1](#).

A public hearing will be held at the Department of Social Services Building, Prairie Conference Room, 811 East 10th Street, Sioux Falls, South Dakota, on October 11, 2023, at 10:30 a.m. (CT). Interested parties may also attend by calling (605) 679-7263 and using conference code 914 158 355#. Copies of the proposed rules may be obtained without charge from, and written comments may be sent to, Teresa Schulte, Administrative Rules, Department of Social Services, 811 East 10th Street, Sioux Falls, South Dakota 57103. The rules are also available online at <http://rules.sd.gov>. Comments may also be emailed to DSSAdminRules@state.sd.us. Material sent by mail must reach the department by October 21, 2023, to be considered. This hearing is being held in a physically accessible location. Persons with special needs for which the department can make arrangements may call (605) 367-5444, extension 1000309, at least 48 hours before the public hearing.

Department of Game, Fish and Parks: (September 14, 2023) intends to amend and repeal rules to consolidate all park entrance license exemptions into one rule; modify park entrance license exemptions and repeal the rule in its entirety; and adjust license allocations that are issued in the Hunt for Habitat drawing. The general authority for these rules, as cited by the department, is SDCL [41-2-18](#), [41-6-84](#), [41-17-1.1](#), [41-17-13](#), and [41-17-13.4](#).

A public hearing will be held at Cadillac Jacks Gaming Resort, 360 Main Street, Deadwood, South Dakota, on October 5, 2023, at 2:00 p.m. (MT). Copies of the proposed rules may be obtained without charge from, and written comments on the proposed rules may be sent to, the Secretary of the Department of Game, Fish and Parks, Foss Building, 523 East Capitol Avenue, Pierre, South Dakota 57501. The rules are also available online at <https://rules.sd.gov>. Comments may also be submitted at <http://gfp.sd.gov/forms/positions>. All written and email comments must include the name, city, and state of the person submitting them. The comment period will close 72 hours prior to the date of the hearing. This hearing is being held in a physically accessible location. Persons with special needs for which the department can make arrangements may call (605) 773-3718 or (605) 223-7684 (Telecommunication Device for the Deaf).

South Dakota Board of Physical Therapy (Department of Health): (September 14, 2023) intends to adopt and amend rules to update the application and license renewal fee to accommodate biennial licensure; update the code of ethics for physical therapists; adopt a code of ethics for physical therapist assistants; update the hours of continuing education required for license renewal to accommodate biennial licensure; and update references to the Board of Physical Therapy. The general authority for these rules, as cited by the board, is SDCL [36-10-27](#), [36-10-32](#), [36-10-33](#), [36-10-35.1](#), [36-10-35.2](#), [36-10-36](#), and [36-10-52](#).

A public hearing will be held at the South Dakota Board of Physical Therapy Office, 629 Main Street, Spearfish, South Dakota, on October 24, 2023, at 11:00 a.m. (MT). Interested parties may also participate via Microsoft Teams. Copies of the proposed rules may be obtained without charge from, and written comments may be sent to, the South Dakota Board of Physical Therapy, 810 North Main Street #298, Spearfish, South Dakota 57783. Copies of the proposed rules may also be obtained from, and written comments may be submitted to, <https://rules.sd.gov>. Material sent by mail or email must reach the board by October 19, 2023, to be considered. This hearing is being held in a physically accessible location. Persons with special needs for which the department can make arrangements may call (605) 773-3361 at least 48 hours before the public hearing.

South Dakota State Board of Dentistry (Department of Health): (September 14, 2023) intends to amend rules to update license, registration, and permit fees that have not been updated since 2012. The general authority for these rules, as cited by the board, is SDCL [36-6A-14](#), [36-6A-44](#), [36-6A-44.2](#), [36-6A-47](#), [36-6A-47.1](#), [36-6A-49](#), [36-6A-49.1](#), [36-6A-50](#), and [36-6A-52](#).

A public hearing will be held at the Drifters Event Center, 325 Hustan Avenue, Fort Pierre, South Dakota, on October 20, 2023, at 10:00 a.m. (CT). Copies of the proposed rules may be obtained without charge from, and written comments on the proposed rules may be sent to, the South Dakota State Board of Dentistry, P.O. Box 1079, Pierre, South Dakota 57501. Copies are also available at <https://www.sdboardofdentistry.org/>. Comments may also be emailed to contactus@sdboardofdentistry.com. The comment period will close on October 16, 2023. This hearing is being held in a physically accessible location. Persons with special needs for which the board can make arrangements may call (605) 224-1282 or (800) 877-1113 (Telecommunication Relay Services for the Deaf) at least 48 hours before the public hearing.

Department of Health: (September 14, 2023) intends to amend a rule to add Newborn Hearing Screening to South Dakota's newborn screening panel. The general authority for this rule, as cited by the department, is SDCL [34-24-25](#).

A public hearing will be held at the Public Health Laboratory Large Conference Room, 615 East 4th Street, Pierre, South Dakota, on October 12, 2023, at 3:00 p.m. (CT). Copies of the proposed rules may be obtained without charge from the Department of Health, Newborn Screening Program, 615 East 4th Street, Pierre, South Dakota 57501. Written comments may be sent to the Department of Health, 615 East 4th Street, Pierre, South Dakota 57501 or emailed to the Newborn Screening Program at DOHNewbornScreening@state.sd.us. Material sent by mail must reach the Department of Health by October 22, 2023, to be considered. Those wishing to testify remotely must register by October 6, 2023, by email to dohcomments@state.sd.us. Witnesses should provide their full name, email address, whom they are representing, and city of residence. This hearing is being held in a physically accessible location. Persons with special needs for which the department can make arrangements may call (605) 773-3737 at least 48 hours before the public hearing.

Department of Health: (September 14, 2023) intends to adopt and amend rules to update and clarify the minimum regulations related to operation, physical environment, fire protection, management and administration, physician services, nursing and related care services, dietetic services, medication control, medical record services, hospital diagnostic services, hospital complimentary services, long-term care supportive services, construction standards, additional hospital standards, and swing bed patients' rights necessary for hospitals, specialized hospitals, critical access hospitals, and rural emergency hospitals to maintain the health and safety of patients receiving services in these facilities; and add rural emergency hospitals to ARSD article [44:75](#), as authorized by [House Bill 1123](#) during the 2022 legislative session, to outline the minimum regulations necessary to operate a rural emergency hospital. Rural emergency hospitals were designated as a new Medicare provider type for Medicare and Medicaid Services (CMS) in January 2023. The general authority for these rules, as cited by the department, is SDCL [34-1-17](#), [34-12-7](#), [34-12-13](#), and [34-22-9](#).

A public hearing will be held at the Department of Health Robert Hayes Building Conference Room, 600 East Capitol Avenue, Pierre, South Dakota, on October 18, 2023, at 2:00 p.m. (CT). Copies of the proposed rules may be obtained without charge from the Department of Health, 600 East Capitol Avenue, Pierre, South Dakota 57501 or at <https://rules.sd.gov>. Written comments may be sent to the Department of Health, Office of Licensure and Certification, 600 East Capitol Avenue, Pierre, South Dakota 57501 or by going to <https://rules.sd.gov>. The deadline to submit any such written comments for consideration by the department is October 28, 2023. This hearing is being held in a physically accessible location. Persons with special needs for which the department can make arrangements may call (605) 773-3361 at least 48 hours before the public hearing.

Office of the Attorney General: (September 14, 2023) intends to adopt and amend rules to update and clarify minimum standards, training, and employment regulations for law enforcement officers and 911 telecommunicators; correct certain statutory references and definitions; provide provisions for refusal of school sentinel applications; and expand law enforcement employment eligibility in limited cases, permitting certain technical college students who complete a state-recognized law enforcement program to be potentially eligible for employment prior to reaching age 21. The general authority for these rules, as cited by the office, is SDCL [23-3-35](#), [23-3-41](#), [23-3-42](#), [23-3-44](#), [34-45-26](#), and [34-45-29](#).

A public hearing will be held at the Mickelson Building, Second Floor Large Conference Room, 1302 East Highway 14, Pierre, South Dakota, on October 12, 2023, at 9:00 a.m. (CT). Copies of the proposed rules may be obtained without charge from the South Dakota Attorney General, 1302 East Highway 14, Suite 1, Pierre, South Dakota 57501. Written comments may be sent to the Law Enforcement Officers Standards and Training Commission, c/o South Dakota Law Enforcement Training, 1302 East Highway 14, Suite 5, Pierre, South Dakota 57501. Comments may also be sent electronically to ATGHelp@state.sd.us or submitted at <https://rules.sd.gov>. The deadline to submit any such written comments for consideration by the commission is 72 hours before the date of the public hearing. This hearing is being held in a physically accessible location. Persons with special needs for which the office can make arrangements may call (605) 773-3584 at least 48 hours before the public hearing.

Department of Human Services: (September 15, 2023) intends to adopt, amend, and repeal rules to add regulatory definitions for the terms "abuse," "exploitation," and "neglect;" revise criteria for imposing probation on certain providers; specify that providers must afford all participants their rights; specify providers may not allow or condone abuse, neglect, or exploitation; update appeal provisions when services are terminated by a provider; update definitions concerning Family Support Waiver Services; clarify hiring responsibilities under the agency with choice model; add new language concerning the common-law employer model; add specialized therapies as a service covered under the Family Support Waiver; repeal review of a qualified provider; update notice requirements for when an intermediate care facility terminates services; and repeal certain registration requirements for interpreters. The general authority for these rules, as cited by the department, is SDCL [27B-1-15](#), [27B-2-25](#), and [27B-2-26](#).

A public hearing will be held at the Hillview Building, 3800 East Highway 34, Pierre, South Dakota, on October 11, 2023, at 1:00 p.m. (CT). Copies of the proposed rules may be obtained without charge from, and written comments may be sent to, the Department of Human Services, Hillview Plaza, 3800 East Highway 34, c/o 500 East Capitol Avenue, Pierre, South Dakota 57501 or by email to DHSInfo@state.sd.us. Copies of the rules are also available at <https://rules.sd.gov>. Material sent by mail or email must reach the department by October 25, 2023, to be considered. This hearing is being held in a physically accessible location. Persons with special needs for which the department can make arrangements may call (605) 773-5990 at least 48 hours before the public hearing.

Department of Social Services: (September 15, 2023) intends to adopt and amend rules to replace the term "division" with "department" throughout most of ARSD articles 67:61 and 67:62 to coincide with the transition of the accreditation and licensing of providers or agencies to the newly formed Office of Licensing and Accreditation within the Department of Social Services. The general authority for these rules, as cited by the department, is SDCL [1-36-25](#), [27A-1-9](#), [27A-5-1](#), and [34-20A-27](#).

A public hearing will be held at the Department of Social Services Building, Prairie Conference Room, 811 East 10th Street, Sioux Falls, South Dakota, on October 11, 2023, at 9:30 a.m. (CT). Interested parties may also attend by calling (605) 679-7263 and using conference code 311 578 922#. Copies of the proposed rules may be obtained without charge from, and written comments may be sent to, Teresa Schulte, Administrative Rules, Department of Social Services, 811 East 10th Street, Sioux Falls, South Dakota 57103. The rules are also available online at <http://rules.sd.gov>. Comments may also be emailed to

DSSAdminRules@state.sd.us. Material sent by mail must reach the department by October 21, 2023, to be considered. This hearing is being held in a physically accessible location. Persons with special needs for which the department can make arrangements may call (605) 367-5444, extension 1000309, at least 48 hours before the public hearing.

FILINGS WITH THE OFFICE OF THE SECRETARY OF STATE

Executive Appointments

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeding</u>	<u>Effective/End Date</u>
Board of Minerals and Environment			
Robert E. Ewing Spearfish	Governor	Dennis Landguth	9/14/2023 – 6/30/2025
Housing Development Authority			
Jonathan J. Guenthner Mitchell	Governor	Mark Puetz	9/11/2023 – 6/30/2028
South Dakota Aeronautics Commission			
Robert F. Huggins Sioux Falls	Governor	Reappointed	11/1/2023 – 10/30/2026
John E. Taylor Sioux Falls	Governor	Dave Luers	10/31/2023 – 10/30/2026
South Dakota Athletic Commission			
Mark M. Johnston Sioux Falls	Governor	Reappointed	9/11/2023 – 6/30/2026
South Dakota Commission on Gaming			
Mark R. Millage Sioux Falls	Governor	Karl Fischer	9/14/2023 – 4/14/2026
South Dakota Health and Educational Facilities Authority			
David A. Timpe Hartford	Governor	Reappointed	9/14/2023 – 6/30/2028
South Dakota Lottery Commission			
Joseph F. Kafka Sioux Falls	Governor	Reappointed	9/15/2023 – 1/1/2026
South Dakota Workforce Development Council			
Chris A. Houwman Sioux Falls	Governor	Reappointed	9/11/2023 – 6/30/2026

State Banking CommissionJeffory A. Erickson
Sioux Falls

Governor

Reappointed

11/1/2023 – 10/30/2026

State Library BoardTravis A. Aslesen
Howard

Governor

Reappointed

11/1/2023 – 10/30/2026

Tom Nelson
Spearfish

Governor

Reappointed

11/1/2023 – 10/30/2026

Transportation CommissionLarry A. Nelson
Canton

Governor

Reappointed

9/11/2023 – 4/18/2026

SCHEDULED PUBLIC HEARINGS

9-20-2023	<u>South Dakota Board of Nursing Facility Administrators (Department of Health)</u> : Adopt and amend rules to complete a fee update that was originally scheduled in 2020 and delayed due to the pandemic and update statutory references; 50 SDR 22, August 21, 2023.
9-26-2023	<u>Department of Transportation</u> : Amend a rule to change the speed limit on State Trunk Highway 50 in and around Yankton; 50 SDR 28, September 1, 2023.
9-27-2023	<u>State Board of Elections (Office of the Secretary of State)</u> : Adopt rules to define terms related to post-election audits; prescribe the form to be used for the notice of appointment of post-election auditing boards; require members of such boards to sign an oath of office; require the county auditor to provide administrative support and staff for post-election auditing boards; prescribe the form to be used for the board's receipt for the official ballots; specify the process for a public vote count including the opening of ballot receptacles and containers, hand-counting ballots, and tallying the audit vote count; prescribe the form to be used to certify the results of a post-election audit; define the procedure for placing post-election audit voted ballots in a ballot receptacle or container; prescribe the form to be used for the seal to be placed on a ballot receptacle or container; and define the process for reimbursement of post-election audit costs; 50 SDR 27, September 5, 2023.
9-27-2023	<u>State Board of Elections (Office of the Secretary of State)</u> : Amend and adopt rules to prescribe the form to be used for the acknowledgement notice for invalid or incomplete voter registration applications; provide instructions for voters using optical scan ballots and those voting absentee; define the process for absentee voting at a nursing facility, assisted living center, or hospital; and clarify the procedure for securing ballot boxes; 50 SDR 28, September 6, 2023.
9-28-2023	<u>Department of Health</u> : Adopt and amend rules to update and clarify definitions related to medical cannabis; review allowable amounts of cannabis product and scale certification for scales used to weigh and measure cannabis product; define additives and terpenes in the manufacturing process; clarify that all sales of cannabis and cannabis products must be in a certified medical cannabis dispensary; clarify the definition of final form of cannabis prior to retail sale; remove the exemption of pre-roll cannabis from testing requirements; add expiration dates and use by dates to packaged cannabis product; clarify use of inventory tracking system plant tags; increase the establishment certification fee to reflect the inflationary increase allowed by statute; and repeal the petition process for debilitating conditions; 50 SDR 27, September 5, 2023.
9-28-2023	<u>South Dakota Board of Accountancy (Department of Labor and Regulation)</u> : Adopt and amend rules to update education measurements and accrediting agency names and expand the qualifying period to pass the Uniform CPA exam; 50 SDR 28, September 5, 2023.
10-3-2023	<u>Department of Health</u> : Adopt and amend rules to allow the ground component of an air ambulance service to transfer patients from one healthcare facility to another healthcare facility, unless a local

	government agreement or ordinance provides otherwise, and to allow the ground ambulance component for healthcare facility-operated air ambulance services to provide interfacility transfers under certain conditions; 50 SDR 28, September 5, 2023.
10-5-2023	<u>Department of Game, Fish and Parks:</u> Amend and repeal rules to consolidate all park entrance license exemptions into one rule; modify park entrance license exemptions and repeal the rule in its entirety; and adjust license allocations that are issued in the Hunt for Habitat drawing; 50 SDR 34, September 18, 2023.
10-10-2023	<u>South Dakota Board of Nursing (Department of Health):</u> Adopt and amend rules to revise and modernize the RN and LPN scope and standards of practice to be consistent with practice statutes in SDCL 36-9-3 and 36-9-4 and national standards of practice; update definitions and terms used; clarify supervision requirements of the LPN, update and modernize the IV therapy tasks an LPN may perform, including the administration of blood components, after obtaining additional education and training; and update tasks and IV medications an LPN may not perform or administer; 50 SDR 14, July 31, 2023.
10-11-2023	<u>Department of Social Services:</u> Amend and adopt rules to update citations; update procedure codes that are reimbursed at a percent of the provider's usual and customary charge and included on the applicable fee schedule; clarify coverage for the removal of implanted contraceptives; clarify coverage for routine foot care services for those diagnosed with metabolic, neurologic, or peripheral vascular diseases; update personal care assessment frequency and the information reviewed; clarify reasons for discontinuation of personal care services; remove the certificate of medical necessity requirement to align with Medicare; increase the timeliness of access to breast pumps by updating billing provisions; update treatment plan timing to coordinate with the mental health chapter and current practice; update and clarify nursing facility level of care definitions, categories, and various coverage for services; clarify what settings and services apply to each level of care classification; clarify and detail the specialized therapy services that are covered under the Family Support 360 waiver program and update the applicable procedure codes for billing those services; and remove repealed rule references; 50 SDR 34, September 18, 2023.
10-11-2023	<u>Department of Social Services:</u> Adopt and amend rules to replace the term "division" with "department" throughout most of ARSD articles 67:61 and 67:62 to coincide with the transition of the accreditation and licensing of providers or agencies to the newly formed Office of Licensing and Accreditation within the Department of Social Services; 50 SDR 36, September 18, 2023.
10-11-2023	<u>Department of Human Services:</u> Adopt, amend, and repeal rules to add regulatory definitions for the terms "abuse," "exploitation," and "neglect;" revise criteria for imposing probation on certain providers; specify that providers must afford all participants their rights; specify providers may not allow or condone abuse, neglect, or exploitation; update appeal provisions when services are terminated by a provider; update definitions concerning Family Support Waiver Services; clarify hiring responsibilities under the agency with choice model; add new language concerning the common-law employer model; add specialized therapies as a service covered under the Family Support Waiver; repeal review of a qualified provider; update notice requirements for when an intermediate care facility terminates services; and repeal certain registration requirements for interpreters; 59 SDR 36, September 18, 2023.
10-12-2023	<u>Department of Health:</u> Amend a rule to add Newborn Hearing Screening to South Dakota's newborn screening panel; 50 SDR 35, September 18, 2023.
10-12-2023	<u>Office of the Attorney General:</u> Adopt and amend rules to update and clarify minimum standards, training, and employment regulations for law enforcement officers and 911 telecommunicators; correct certain statutory references and definitions; provide provisions for refusal of school sentinel applications; and expand law enforcement employment eligibility in limited cases, permitting certain technical college students who complete a state-recognized law enforcement program to be potentially eligible for employment prior to reaching age 21; 50 SDR 36, September 18, 2023.
10-18-2023	<u>Department of Health:</u> Adopt and amend rules to update and clarify the minimum regulations related to operation, physical environment, fire protection, management and administration, physician services, nursing and related care services, dietetic services, medication control, medical record services, hospital diagnostic services, hospital complimentary services, long-term care supportive services, construction standards, additional hospital standards, and swing bed patients' rights

	necessary for hospitals, specialized hospitals, critical access hospitals, and rural emergency hospitals to maintain the health and safety of patients receiving services in these facilities; and add rural emergency hospitals to ARSD article 44:75 , as authorized by House Bill 1123 during the 2022 legislative session, to outline the minimum regulations necessary to operate a rural emergency hospital. Rural emergency hospitals were designated as a new Medicare provider type for Medicare and Medicaid Services (CMS) in January of 2023; 50 SDR 35, September 18, 2023.
10-20-2023	South Dakota State Board of Dentistry (Department of Health) : Amend rules to update license, registration, and permit fees that have not been updated since 2012; 50 SDR 35, September 18, 2023.
10-24-2023	South Dakota Board of Physical Therapy (Department of Health) : Adopt and amend rules to update the application and license renewal fee to accommodate biennial licensure; update the code of ethics for physical therapists; adopt a code of ethics for physical therapist assistants; update the hours of continuing education required for license renewal to accommodate biennial licensure; and update references to the Board of Physical Therapy; 50 SDR 35, September 18, 2023.

RULES REVIEW COMMITTEE MEETINGS

The next meeting of the Interim Rules Review Committee for the 2023 Interim is Thursday, September 21, 2023, at 10:00 a.m. (CT) via electronic conference and in Room 414 of the Capitol. The final meeting for the 2023 Interim is scheduled for November 7. Find notices of committee meetings in this publication, on the [LRC website](#), and at the Capitol.

The Drafting Manual for Administrative Rules in South Dakota is available on the [Administrative Rules Manual page](#) of the LRC website and is updated regularly to reflect changes in drafting styles and procedures.